**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

PRESENT:-

THE HONOURABLE MR. JUSTICE P.R.RAMAN

THURSDAY, THE 1ST FEBRUARY 2007 / 12TH MAGHA 1928

**M.F.A.No.1331 of 2001(C)**

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O.P.(M.V.) NO.57/1994 OF THE COURT OF THE MOTOR ACCIDENTS CLAIMS TRIBUNAL, MANJERI.

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**APPELLANT**/PETITIONER:-

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T.SUBRAMANIYAN, AGED 30 YEARS,
S/O.NEELANDAN, KOTTATHODIPARAYIL HOUSE,
P.O.IYAKARAPADI.

BY ADV. SRI.S.V.BALAKRISHNA IYER

**RESPONDENTS**/RESPONDENTS 1, 3 TO 6 AND SUPPL. RESPONDENTS 7 & 8:-

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1. AMPAYATHINGAL BASHEER, S/O.KOYALI,
   CHERUKAVU, P.O.IYAKARAPADI.

2. NEW INDIA ASSURANCE CO. LTD.,
   DIVISIONAL OFFICE, MALAPPURAM.

3. AAPPARAMBAN ABDUL RASHEED, S/O.ABDULLA,
   CHERUKAVU, IYAKARAPADI P.O.

4. M.KUNHIMOHAMMED, S/O.POCKER, MATTATHU HOUSE,
   KATTAPALLY, BADAGARA.

5. THE ORIENTAL INSURANCE CO. LTD.,
   DIVISIONAL OFFICE, CALICUT.

6. KALLIYAN ALAVIKUTTY HAJI,
   S/O.ENI HAJI, KAROTH HOUSE, P.O.RAMANATTUKARA.

7. PATHUMMA, W/O.KALLIYAN ALAVIKUTTY HAJI,
   KAROTH HOUSE, P.O.RAMANATTUKARA.

R2 BY STANDING COUNSEL SRI.THOMAS MATHEW NELLIMOOTTIL
R5 BY STANDING COUNSEL SRI.M.JACOB MURICKAN.

THIS MISCELLANEOUS FIRST APPEAL HAVING COME UP FOR ADMISSION ON 01/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:-

**P.R.Raman,J.**

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M.F.A.No.1331 of 2001-C

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Dated, this the 1st day of February, 2007

**JUDGMENT**

The appellant is a claimant in O.P.(M.V.).No.57 of 1994 on the file of the Motor Accidents Claims Tribunal, Manjeri. He was a traveller in a jeep which collided with another jeep, in which he sustained injuries. Both the vehicles were insured. The vehicle in which the appellant travelled was insured with the 2nd respondent, whereas the other vehicle involved in the accident was insured with the 5th respondent. The Court below found that the liability has to be apportioned equally between the two vehicles and hence the compensation awardable is to be shared equally by the two Insurance Companies. A total amount of Rs.50,000/- by way of compensation together with interest thereon at the rate of 9% till realisation and a cost of Rs.3,000/- was awarded. This appeal is preferred seeking further enhancement of the amount towards compensation.

2. The Tribunal has fixed the monthly income of the petitioner at Rs.1250/- and thus estimated the loss of earning power by applying the multiplier of 17 and rounded off to

Rs.11,250/-. The claimant as P.W.1 has given evidence regarding his income and according to him he was a Mason and he was earning Rs.2,100/- per month during the relevant period. As against the evidence of P.W.1, there was no contra evidence, but the Court below steeply reduced the income to Rs.1,250/-, which is applicable in a case where there is absolutely no evidence. Since P.W.1 has not been disbelieved, his evidence regarding income said to be received by him should have been accepted by the Court below. In the circumstances, I find that the Court below has erred and reduced the income to Rs.1,250/- per month. After considering all aspects of the matter, I am of the view that it will be just and proper to fix his income at Rs.2,000/- per month. If so, applying the multiplier of 17, he will be entitled for compensation as follows: 2000x12x4x17/100 = Rs.16,320/-. The Tribunal has already awarded an amount of Rs.11,250/-. The balance of Rs.5,070/- (Rupees five thousand and seventy only) more shall be paid.

3. The nature of the injuries sustained is beyond dispute. The Court below has fixed the compensation under different heads, like loss of earnings, transportation to hospital,

extra nourishment, by-stander's expenses, damage to clothing, medical expenses, pain and suffering and disability. I do not think, any interference is called for in the compensation so fixed under various heads.

In the result, the award is slightly modified, enhancing the amount of compensation to Rs.55,070/- instead of Rs.50,000/- with interest and costs as awarded by the Court below. However, the appellant will be entitled to get interest at 9% per annum from today till realisation on the additional amount of compensation so awarded.

P.R.Raman
Judge

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